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Major new mental health law long awaited

Irish Times, 15 November 2006

Significant changes were made recently to the law governing how a person may be detained under the mental health acts. *Darius Whelan* explains

Following decades of delay, Ireland's reformed mental health law is finally in force. The main immediate practical difference will be that as of November 1st, 2006, every involuntary detention in a psychiatric hospital or unit must normally be reviewed by a three-person Mental Health Tribunal within 21 days.

There may be 2,000 or more tribunal hearings each year, and so a large number of tribunal members have been recruited to cover these hearings.

The Mental Treatment Act 1945 has been the main governing legislation in the area for 60 years, and was entirely inadequate for modern mental health services. It contained very few protections for patients, and no automatic periodic reviews of detention.

Unfortunately, the Irish courts were unwilling to find that the 1945 Act infringed constitutional rights (especially in *Croke v Smith*, 1996), but at European Court of Human Rights level, there were indications that the legislation was unlikely to withstand challenge.

As far back as 1981, a reforming Act was passed, but never implemented for a variety of reasons, including its failure to provide a robust enough system of reviews of detention. Following Green and White Papers in 1992 and 1995, a new Bill was published in 1999 and was eventually enacted as the Mental Health Act 2001. It has taken a further five years for the main substantive provisions of the Act to come into force.

The most substantial change in the Act, the provision of automatic periodic reviews of detention by Mental Health Tribunals, only affects a small proportion of people who avail of mental health services.

Only 11 per cent of admissions to psychiatric hospitals and units (2,289 of 21,253) are involuntary, and only 15 per cent of residents in such hospitals and units on November 4th, 2005 (519 of 3,475) were admitted on an involuntary basis. And, of course, there are thousands of other people who avail of mental health services in community care settings (numbers are being gathered by the Health Research Board). But from a legal point of view, the patients who are detained against their will are the most significant category, and a group which requires a particularly high level of legal safeguards.

From November 1st on, if a person is detained in a psychiatric hospital, a notification will be sent to the Mental Health Commission within 24 hours. The commission will appoint a solicitor or barrister to represent the patient, and an independent psychiatrist to visit and assess the patient. Within 21 days of the detention, if the patient has not been discharged, there will normally be a tribunal hearing.

The three members of the tribunal will be a solicitor or barrister as chair, a consultant psychiatrist and another person. The tribunal will either affirm the detention or order the patient's discharge. Detailed criteria are laid down in the Act as to the grounds for detention, including, for example, the fact that the person is likely to cause harm to themselves or others, or that their judgment is impaired and their condition would deteriorate if they were not detained.

If the patient's detention is affirmed, and continues to be renewed by the hospital, a tribunal will review the case within 21 days of each renewal, eg after a further three months and six months.

As part of the review process, at least three psychiatrists will be involved: the psychiatrist in the mental hospital who will be of the opinion that the patient's detention should continue, the

independent psychiatrist who reports to the tribunal on the current condition of the patient, and the psychiatrist who sits as a member of the tribunal. Decisions of tribunals may be appealed to the Circuit Court, or be the subject of a judicial review in the High Court. The cases of patients detained under the 1945 Act, which is repealed by the new Act, will be reviewed within six months as if they had been detained under the 2001 Act.

The Act also contains a number of other important reforms: the best interests of the patient are to be the principal consideration in making decisions under the Act; a person cannot be detained on grounds of alcohol addiction alone; there are new rules regarding consent to treatment; and a statutory Mental Health Commission is established.

It will be interesting to see whether the new Act will lead to any improvements in the quality of services for patients. While there have been numerous critical comments from the inspector of Mental Health Services in her annual reports, there was nothing that could be done to force improvement.

There is some potential for matters to change from now on, as Part 5 of the new Act regulates registration by the Mental Health Commission of "approved centres", ie hospitals and units in which patients may be detained. The commission will have the power to remove a centre from the register if the premises do not comply with regulations, or if "the carrying on of the centre" does not comply with the regulations.

The commission may also attach conditions to registration of a centre, eg requiring refurbishment of the centre, or review of policies in the centre. In light of the recent controversy about Leas Cross nursing home, the commission may well be reluctant to rubber-stamp low standards of care.

The Mental Health Act 2001 is part of a wider picture of major change in mental health services. Earlier this year, the Government committed to implementing the strategy recommended by the Expert Group on Mental Health Policy, A Vision for Change.

The strategy recommended a significant programme of investment in mental health services, services which were funded at €646 million in 2005. The Criminal Law (Insanity) Act 2006 came into force on June 1st and the Mental Health (Criminal Law) Review Board was established in September.

There is no room for complacency as implementation of this legislation and policies will require determination, commitment and political leadership.

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